

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION**

<b>JOHN JAMES GALADA</b>	§	<b>PLAINTIFF</b>
	§	
<b>v.</b>	§	<b>CIVIL ACTION NO. 1:07CV937-LG-JMR</b>
	§	
<b>DIANE GASTON-RILEY, et al.</b>	§	<b>DEFENDANTS</b>

**ORDER ADOPTING REPORT AND RECOMMENDATION**

**BEFORE THE COURT** is the Report and Recommendation [156] entered by Chief United States Magistrate Judge John M. Roper on January 22, 2010. Judge Roper recommends that the Motion for Default Judgment against Diane Gaston-Riley<sup>1</sup> [146] filed by John James Galada be denied. Upon reviewing the Report and Recommendation, the record in this matter, and the applicable law, the Court finds that the Report and Recommendation should be adopted as the opinion of this Court.

**DISCUSSION**

Galada was advised that he must file any objections to Judge Roper's recommendations within fourteen days of being served with a copy of the Report and Recommendation. The Court record reveals that Galada has not filed an objection to the Report and Recommendation. Where no party has objected to the Magistrate Judge's report and recommendation, the Court need not conduct a *de novo* review of it. *See* 28 U.S.C. § 636(b)(1) ("A judge of the court shall make a *de novo* determination of those portions of the report or specified proposed findings and recommendations to which objection is made."). In such cases, the Court need only satisfy itself that there is no clear error on the face of the record. *Douglass v. United Serv. Auto Ass'n*, 79

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<sup>1</sup> The defendant's name is actually spelled "Diane Gatson-Riley," but the spelling error has not been formally corrected in the record.

F.3d 1415, 1420 (5th Cir. 1996).

On January 30, 2009, Galada filed an amended complaint in this *pro se* Section 1983 action, naming Gaston-Riley and others as defendants. He alleges that his civil rights were violated when he was assaulted by a deputy sheriff at the Harrison County Adult Detention Center. After Gaston-Riley's attorney agreed to accept service of process on her behalf, the Court entered an order on October 15, 2009, that required Gaston-Riley to file an answer in thirty days. The answer thus would have been due on November 14, 2009,<sup>2</sup> but because that day fell on a Saturday, the answer was actually due on Monday, November 16, 2009, pursuant to Fed. R. Civ. P. 6(a)(3). However, the extension provided by Rule 6 is irrelevant in the present case, because Gaston-Riley filed her answer on Friday, November 13, 2009.

Nevertheless, Galada filed an Application for Clerk's Entry of Default on November 20, 2009, arguing that Diane Gaston-Riley had failed to timely file an answer to his Amended Complaint. After his application for a default was denied, he filed the present Motion for Default Judgment. In his rebuttal in support of the Motion, Galada admits that Gaston-Riley has demonstrated that she timely filed an answer to the amended complaint on November 13, 2009, but he claims that her attorney failed to send him a copy of the answer.<sup>3</sup> Because Gaston-Riley timely filed her answer to the amended complaint, the Court finds that Galada is not entitled to a default judgment. *See* Fed. R. Civ. P. 55.

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<sup>2</sup> The Report and Recommendation states that the answer would have been due on Sunday, November 15, 2009, but this error does not affect the outcome of this Motion because the answer was undisputedly timely filed on November 13, 2009.

<sup>3</sup> The Certificate of Service attached to the answer provides that a copy of the answer was provided to Galada on November 13, 2009.

Having conducted the required review, the Court finds that Judge Roper's Report and Recommendation is neither clearly erroneous nor contrary to law. Therefore, the Court finds that the Report and Recommendation entered by Chief United States Magistrate Judge John M. Roper should be adopted as the opinion of this Court.

**IT IS, THEREFORE, ORDERED AND ADJUDGED** that the Report and Recommendation [156] entered by Chief United States Magistrate Judge John M. Roper, be, and the same hereby is, **ADOPTED** as the finding of this Court. The Motion for Default Judgment against Diane Gaston-Riley [146] filed by John James Galada is **DENIED**.

**SO ORDERED AND ADJUDGED** this the 19th day of February, 2010.

s/ *Louis Guirola, Jr.*

Louis Guirola, Jr.  
United States District Judge